



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

August 7, 2023

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Greg and Alicia Yowell
Association: Cedar Key Homeowners Association, Inc.
File Number: 2024-00192

The Office of the Common Interest Community Ombudsman has been designated to review final adverse decisions and determine if they may be in conflict with laws or regulations governing common interest communities. Such determination is within the sole discretion of the Office of the Common Interest Community Ombudsman and not subject to further review.

Complaint

The Complainant submitted a complaint to the Association, dated May 30, 2023. The Association provided a response to the association complaint dated July 12, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 25, 2023 and received July 27, 2023.

Authority

The Common Interest Community Ombudsman (CICO), as designee of the Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18VAC 48-70-120) The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with §54.1-2354.4 (Code of Virginia) and the Common Interest Community Ombudsman Regulations (Regulations). A NFAD results from an association complaint submitted through an association complaint procedure. The association complaint must be submitted in accordance with the applicable association complaint procedure and, as very specifically set forth in the Regulations, "shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.

Under the Regulations, "applicable laws and regulations" pertain solely to common interest community laws and regulations. Any complaint that does not concern common interest community laws or regulations is not appropriate for submission through the association complaint procedure and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia

Condominium Act, the Property Owners' Association Act, and the Virginia Real Estate Cooperative Act.

Pursuant to the Regulations (18 VAC 48-70-90), the only documents that will be considered when reviewing a NFAD are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered.

This Determination is final and not subject to further review.

If within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination

The Complainant alleges that the Association mischaracterized proposed community rules, applied an improper requirement for the percentage vote necessary to pass such rules, that the rules themselves are in violation of the Covenants, Conditions, and Restrictions (CC&Rs) and the powers given to the Board under §55.1-1819¹ of the Property Owners' Association Act. The Complainant further alleges that the rules would incorporate policies and restrictions over private lots that would fall outside the authority provided by §55.1-1819.

The Association responded to the allegations by stating that it rejects the Complainant's position on the amendments because it believes the vote was governed by the By-Laws of the association and §55.1-1819. The Association noted that the purpose of the amendment was to clarify the Board's responsibilities under §55.1-1819 and believes that statute authorizes the members to amend the rules as adopted.

I am not entirely convinced that an association can actually be in violation of the portion of §55.1-1819 that delineates the powers of a board in directors in relation to establishing, adopting, and enforcing rules and regulations. Instead, this portion of the statute seems merely to define the powers of a board of directors in relation to rules and regulations. However, if we

¹ A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. At a special meeting of the association convened in accordance with the provisions of the association's bylaws, a majority of votes cast at such meeting may repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including application for injunctive relief or actual damages, during which the court shall award to the prevailing party court costs and reasonable attorney fees.

accept that an association can violate this provision, such violation is entirely dependent upon the declaration of the association "with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members."

Clearly the only way to determine the power of the Association under this statute would be to review and interpret the declaration, at a minimum, and likely the bylaws and existing rules as well. As has always been the case, we have no authority to review and interpret governing documents of an association since doing so would take us well outside the boundaries of our jurisdiction. Because of this, I am very sorry, but we are unable to provide a determination on this Notice of Final Adverse Decision.

Required Actions

No action is required of the Association.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Heather Gillespie". The signature is fluid and cursive, with the first name being more prominent.

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Cedar Key Homeowners Association, Inc.